

REMARKS

Status of the Claims

The Final Office Action mailed February 4, 2009 noted that claim 3 was pending and rejected claim 3. Claim 3 is amended. New claims 13 and 14 are added. No new matter is believed to be presented.

Claims 3, 13, and 14 are pending and under consideration. Reconsideration of the claims is respectfully requested. The rejection is traversed below.

Rejection under 35 U.S.C. § 103

The Office Action, on page 2, rejected claim 3 under 35 U.S.C. § 103 over Toshiya et al. (Japanese Publication #2001-273375) in view of North Carolina Bar Exam Results – July 2001 Exam. This rejection is respectfully traversed below.

The Office Action, on page 2, notes that: "[a]lthough Toshiya discloses wherein the results can include the results of other examinees willing to share, (see paragraph [0026]), there is no teaching wherein it is ID numbers in close proximity with corresponding results that is transmitted to the examinee." However, the Office Action then refers to an archived copy of a website displaying pass/fail information of bar exam results for the state of North Carolina in 2001. It is notable that the archived website merely lists ALL of the applicants and entire names of those who passed the exam.

North Carolina Bar Exam Results – July 2001 does not cure the admitted deficiencies of Toshiya. Nothing cited or found in the Bar Results teaches "transmitting, in response to reception of the transmission request, **examinee ID numbers of a plurality of passing examinees, including examinee ID numbers in close numerical proximity to an examinee ID number corresponding to the particular examinee.**" If the Examiner is intending to reject claim 3 over Toshiya, North Carolina Bar Results, and Official Notice, this must be in the record, but this Office Action does not make such a rejection. (See MPEP 2144.03: "It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")).

The Office Action merely states "[h]owever posting and releasing exam information including information about other examinees has been **common** for many years (e.g. results of exams were typically posted on boards wherein the scores were ranked and identified by Social Security Number, student ID number, etc.). However, nothing to corroborate this argument is in record. The North Carolina Bar Exam results do not indicate who passed and who did not pass in close numerical proximity and do not use "examinee ID numbers" but rather full names. Thus, the North Carolina Bar Exam results do not teach "transmitting...examinee ID numbers of a plurality of passing examinees, **including examinee ID numbers in close numerical proximity to an examinee ID number corresponding to the particular examinee.**"

In other words, if an examinee has a number of 100, passing numbers in close numerical proximity are transmitted, as a non-limiting example: 96, 99, 100, and 102. One will learn that the examinees whose ID numbers are 97, 98, and 101 have failed, and that the passing rate in close numerical proximity is 4 out of 7. This is not discernable from the North Carolina Bar Results, as THE ENTIRE LIST of passing applicants is provided at once and no information is available about how many examinees failed in close numerical proximity to a particular examinee number.

Thus, Yoshiya and North Carolina Bar Results, taken alone or in combination, do not teach "transmitting, in response to reception of the transmission request, **examinee ID numbers of a plurality of passing examinees, including examinee ID numbers in close numerical proximity to an examinee ID number corresponding to the particular examinee.**"

Withdrawal of the rejection is respectfully requested.

New Claims 13 and 14

New dependent claims 13 and 14 depend from independent claim 3 and are patentable over Toshiya and North Carolina Bar Results for the reasons discussed above. Dependent claims 13 and 14 also recite additional features not taught or suggested by the cited references. For example, claim 13 recites "the transmitting transmits the examinee ID numbers of a **given plurality of passing examinees in close numerical proximity** to the examinee ID number corresponding to the particular examinee from all examinee ID numbers." In particular, the cited references do not teach transmitting a given plurality of passing examinees in close numerical proximity to the examinee ID number. It is submitted that the dependent claims are independently patentable over the cited references.

Summary

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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